

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT CASTILLO and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, Portland, OR

*Docket No. 98-2302; Submitted on the Record;
Issued August 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant established that he was injured at the time, place and in the manner alleged.

On October 13, 1997 appellant, then a 51-year-old steward, claimed that on September 28, 1997 he hit the middle finger of his right hand while pushing a refrigerator door closed. Appellant's supervisor listed the date of injury as September 28, 1997 and noted that notice of injury was received on October 7, 1997. He recorded that the injury involved no time lost from work and no medical expenses.

Appellant subsequently submitted a November 4, 1997 note from Dr. Allen Peters, a specialist in emergency medicine, who reported that appellant gave September 14, 1997 as the date of injury. Dr. Peters related that appellant gave a history of cutting his finger while closing a refrigerator door shut. Appellant stated that he put a bandage on the cut and then started cleaning the hoods using a bottle labeled "409." He noted that the bottle, however, contained a different chemical cleaner. Dr. Peters indicated that appellant's finger was swollen with a decreased range of motion. He diagnosed a finger laceration.

In a February 19, 1998 letter, the Office of Workers' Compensation Programs asked appellant to clarify whether the date of injury was September 28, 1997, as reported in his initial claim, or September 14, 1997, as reported by Dr. Peters. He was given 30 days to respond.

In a June 10, 1998 decision, the Office denied appellant's claim for compensation on the grounds that he had not established an injury at the time, place and in the manner alleged.

The Board finds that appellant has established that he was injured at the time, place and in the manner alleged.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's

statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.¹ The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast doubt upon the validity of the claim. However, his or her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.²

In this case, appellant, in his claim form and in the history given to Dr. Peters, stated that he sustained a cut to the middle finger of his right hand while closing the door of a refrigerator. In his statement to Dr. Peters, he added that he cleaned a hood afterwards with an improperly labeled chemical cleaner. The only true difference between the accounts of the employment incident was the date given as the date of injury, whether it was September 14 or September 28, 1997. The difference in date, by itself, does not present substantial evidence that would cast doubt on appellant's claim of an employment injury. The employing establishment recorded on the claim form that the injury occurred on September 28, 1997. It did not raise any objection to appellant's claim and did not controvert his description of the injury. It noted that appellant reported the incident within two weeks of its occurrence. As the employing establishment reported the injury as a no loss time injury, the slight delay in reporting such a minor injury is not significant given the facts of this case. Other than the date of injury, there are no inconsistencies in appellant's claim that would call into question the validity of his claim. Appellant, therefore, has established that he sustained a laceration of the middle finger of his right hand while at work on September 28, 1997. The case will be returned to the Office for a determination of whether appellant lost any time from work or sustained any medical expenses due to the employment injury.

¹ *Merton J. Sills*, 39 ECAB 572 (1988).

² *Carmen Dickerson*, 36 ECAB 409 (1985).

The decision of the Office of Workers' Compensation Programs, dated June 10, 1998, is hereby reversed.

Dated, Washington, D.C.
August 18, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member